

Summary report of the LABEL legal workshop

„Upstream-downstream problems – The relation between upstream and downstream residents on measures of preventive flood protection at (international) rivers“

*in Dresden
on 20th and 21st January 2011*



Summary report of the legal workshop „Upstream downstream problems“ on 20th and 21st January 2011 in Dresden

Report

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A1 Participants list

1 Introduction

Andreas Kühl, Saxon State Ministry of the Interior, welcomed the participants of the LABEL legal workshop with the subject: “Upstream downstream problems” – The relation between upstream and downstream residents on measures of preventive flood protection at (international) rivers. The actual flood condition at the Elbe and Vltava in Czech Republic, Saxony, Saxony-Anhalt, Lower Saxony and Hamburg shows how topical the subject of the workshop is.

The framework of the legal workshop is offered by the project LABEL – Adaptation to flood risk at the Elbe catchment. Already in the previous project ELLA, the legal background of preventive flood protection in Germany, the Czech Republic and transnational flood protection in the Elbe catchment were analyzed, in LABEL they should be discussed under the new challenges.

2 „The relation between upstream and downstream residents on measures of preventive flood protection at international rivers“¹

The upstream downstream problem is a legal problem, which particularly appears in riparian right. The question is which legal relationship the residents of watercourses have concerning the influence or rather the effect on the water. The necessity for legal regulations is given as the effects of influencing or taking no action of one of the residents can influence the other residents positively or negatively.

There are different policies, which refer to the upstream downstream problem: The international law has a basic significance for this set of problems. It distinguishes between four doctrines to control the distribution of transnational resources between neighbours:

- Unlimited community property
- absolute sovereignty
- absolute integrity
- limited sovereignty

In the so called „**Donauversinkungsfall**“ of 1927 this subject was basically reclaimed for the first time by the superior court for the “Deutsches Reich”. This case describes a dispute in the time of Weimar Republic between State of Baden on one hand and the states Württemberg and Prussia on the other hand. The state Baden was accused to support the sinking of the Danube with hydraulic-engineering changes and called to take measures against the increasing sinking. The State Constitutional Court ruled by relating to the international law: in federation, states have the obligation to respect and consider their neighbours, so that no one suffers damage. With this, the German principle of “Bundestreue” was established.

Especially in the case of nature protection there are several bilateral and multilateral **international contracts**. An example of an international contract referring to flood protection is the agreement about the International Commission for the Protection of the Elbe River (ICPE) of the 8th October 1990.

The **European Community law** manages the transnational flood protection for different tasks. A distinction must be made between primary law and secondary law: The contracts about the

¹ The background paper „Johannes Bohl, 2011: Das Verhältnis von Oberliegern und Unterliegern bei Maßnahmen des vorbeugenden Hochwasserschutzes an (internationalen) Flussläufen“ can be found on the LABEL Website.

establishment and the responsibility of the European Union constitute the primary law. Among others it regulates the principles of cooperation between the member states.

The directives passed by the bodies of the European Union are counted as secondary law. For flood protection are especially relevant:

- Water framework directive (directive 2000/60/EC) and the
- Flood risk management directive (FRM-Dir) (Directive 2007/60/EC), here especially Art. 7 para. 4².

The member states have to implement the directive into state law, so that the national law is relevant for the case. The Federal Republic of Germany is bound to international preventive flood protection – as indicated by the EU and international law. The practical implementation and definition is the task of the Federal States.

3 Conclusions and perspective

Kanut Maucher emphasized in his summary, that in international river catchments within the European Union

- The flood risk management directive is the central joint legal basis for preventive flood protection and provides a good framework for international cooperation.
- The practical implementation and application of the directive on preventive flood protection is the central challenge. A cooperative approach and a long-term international cooperation are therefore important for an effective flood prevention

Prof. Faßbender completed that the legal instruments related to the upstream-downstream problem can be found in several regulations of national law. The FRM-Dir provides the background for a catchment wide coordination with possibilities to exchange experiences and learn from each other in order to jointly manage difficult situations. Specifically, Art 7 para 4 is to be understood as legal obligation to work together. An institutionalisation of the coordinating bodies could be helpful.

Mr Rolfsen, University of Bielefeld, reminded that the FRM-Dir is only a useful instrument if it is implemented decently. According to him, specifications regarding the contents were missing.

Prof. Breuer emphasised that the upstream downstream problem is actually a well-known and everyday problem of riparian right. It is due to the EU directives (water framework and FRM directive) that the sense of community was lifted up to a higher level. A great advantage of the FRM directive is the openness: this allows and requests the early exchange between countries and Solidargemeinschaft states in a river catchment. It even allows further concretisation it in national law. For this, an exchange like this legal workshop is very useful.

The legal status, concluded Mr Dallhammer, is very simple: the repeatedly discussed Art 7 para. 4 of the FRM-Dir is valid for everyone. The states of the European Union live in solidarity with each other and hence have a mutual obligation for loyalty and consideration.

² FRM-Dir, Art. 7, para. 4: „In the interests of solidarity, flood risk management plans established in one Member State shall not include measures which, by their extent and impact, significantly increase flood risks upstream or downstream of other countries in the same river basin or sub-basin, unless these measures have been coordinated and an agreed solution has been found among the Member States concerned in the framework of Article 8.“

Ms Skalova, Czech Ministry of Environment, stresses that the international cooperation in the context of projects should be further intensified. In this cooperation, important documents are worked out which often become basics for the International Commissions for the Protection of Rivers. An important result of LABEL will be a joint understanding of the FRM-Directive. The national implementation approaches in the German States, the Czech Republic, in Austria and in Hungary are discussed; joint features and differences are identified and evaluated. At last, the approaches are coordinated.

A joint understanding of the practical implementation of the legal basis was also worked out in this workshop: The importance of the planning approach was repeatedly stressed, which is preceding e.g. the building law. It is also crucial for preventive flood protection. The identification of priority areas in regional plans is one of the most interesting instruments for exercising of influence to spatial development.

Annex

A3 Participants list

Teilnehmer LABEL Rechtsworkshop
„Oberlieger-Untertiege-Probleme – Das Verhältnis von Oberliegern und Untertiege bei
Maßnahmen des vorbeugenden Hochwasserschutzes an (internationalen) Flussläufen“



Donnerstag, 20.01.2011 / Dresden

Name / Jméno	Organisation / Organizace	Unterschrift / Podpis
Bohl, Johannes RA	BOHL&COLLEGEN Rechtsanwälte	
Breuer, Rüdiger RA Prof. Dr.	Köhler & Klett Rechtsanwälte	
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Durinke, Peter RA	DE WITT Rechtsanwalts-gesellschaft mbH	
Faßbender, Kurt Prof. Dr.	Universität Leipzig - Juristen-fakultät	
Greis, Stefanie	INFRASTRUKTUR & UMWELT, Prof. Böhm und Partner	
Grimm, Birgit	Thüringer Landesanstalt für Umwelt und Geologie	
Götze, Roman RA Dr.	GÖTZE Rechtsanwälte	
Háp, Petr	Královéhradecký Kraj	
Hille, Regina	Sächsisches Staatsministerium des Innern	
Holas, Jiří	Královéhradecký Kraj	
Jendrike, Harald	Sächsisches Staatsministerium für Umwelt und Landwirtschaft	
Koch, Jan	Ústecký Kraj	



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Kühl, Andreas	Sächsisches Staatsministerium des Innern	
Mainusch, Michael	Freie und Hansestadt Hamburg	
Matern, Martina	Dolmetscherin	
Maucher, Kanut	Sächsisches Staatsministerium des Innern	
Meyer, Kristina	TU Dortmund, Fakultät Raumplanung	
Novosád, Filip	Tschechisches Ministerium für Regionalentwicklung	
Novotná, Jolana	Ústecký Kraj	
Pacák, Milan	Královéhradecký Kraj	
Peters, Martin	Thüringer Ministerium für Landwirtschaft, Forsten, Umwelt und Naturschutz	
Řezníčková, JanaDr.	Královéhradecký Kraj	
Rolfson, Michael	Universität Bielefeld	
Seifert, Peter	Regionaler Planungsverband Oberes Elbtal/Ost erzgebirge	



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Skálová, Helena	Ministerstvo životního prostředí	
Tremel, Vaclav RN Dr.	Krajský Úřad Plzeňského Kraje	
Werth, Martin	Landesdirektion Dresden	
Westphälinger, Thomas	Dolmetscher	
Vytejckova, Veronika	Ministerstvo životního prostředí	



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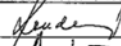
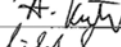
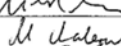
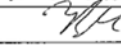
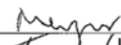
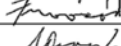

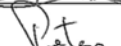
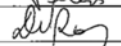
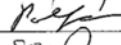
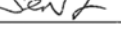




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